

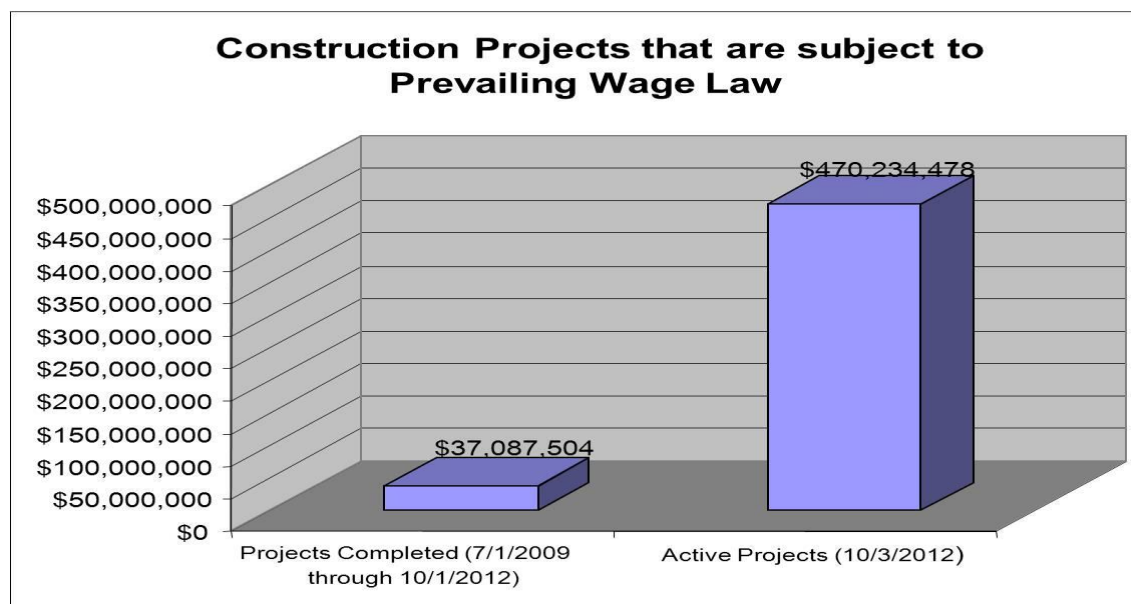
FY12 Prevailing Wage Law Annual Report

Executive Summary

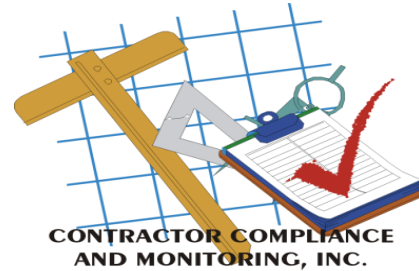
Beginning with contracts executed on July 1, 2009, Montgomery County's Prevailing Wage Law is modeled after the Federal Davis-Bacon and State of Maryland's Prevailing Wage laws. The Prevailing Wage Law mandates that workers on qualified County construction projects be paid Prevailing Wage for their work classification. The Prevailing Wage Rate is the rate paid for comparable work in the private sector within the County. The rates are calculated by the State, based on surveys of construction company employers.

FY12 marks the third year of operation of the Prevailing Wage Law. In FY12, Montgomery County monitored 5 federally funded projects with a total value of over \$76 million, the most notable of which was the Silver Spring Transit Center. 16 County Department of General Services projects valued at over \$293 million and 12 County Department of Transportation projects valued at over \$36 million. A total of 9 construction projects and 17 task order projects were closed out during FY12.

Contractor Compliance and Monitoring, Inc. (CCMI), the County's labor compliance monitoring contractor, launched 12 investigations during FY12. CCMI assessed penalties in the amount of \$24,060 for underpayment/misclassification and \$120,020 for late submission of payrolls. These investigations varied in their size and scope, their results demonstrated the need for the County to be vigilant in its oversight of construction contracts subject to the County's Prevailing Wage Law. Attached is CCMI's annual report to the County, including detailed reports on all projects and observations on industry trends.



Montgomery County, Maryland Labor Compliance Annual Report Fiscal Year 2012



Overview:

Contractor Compliance and Monitoring Inc. (CCMI) was formed in 2002 to assist public agencies with prevailing wage and labor compliance requirements. CCMI began its work with Montgomery County at the initial implementation of the County's labor compliance ordinance in 2009. The established monitoring process includes:

1. Audits addressing the requirements of the County's Prevailing Wage Law;
2. The educational aspect of labor compliance at the Preconstruction Conference (including creating a specific handout for projects funded with County funds and a separate handout with tailored information relating to federally funded projects - Davis-Bacon);
3. Monthly auditing of payrolls with prompt feedback to contractors and the County's Prevailing Wage Program Manager;
4. Onsite visits and interviews tailored to the provisions of the County's Prevailing Wage law;
5. Documentation for final project close out of projects and a final report to Director of the Department of General Services;
6. Updated forms, processes and protocols as the County's labor compliance program matured and best practices were established.

Services Provided:

Work with Montgomery County to ensure proper language for Labor Compliance is in all contracts:

Status: Completed. CCMI provided guidance and templates to the Prevailing Wage Program Manager to be considered for County contracts, including Prevailing Wage Law language and language mandating the use of LCPTracker for the electronic submission of payrolls.

Work with Montgomery County to assemble appropriate federal language and the Davis-Bacon wage determination for ongoing projects:

Status: Ongoing. For each new Davis-Bacon project, CCMI consults with the County to identify the proper Davis-Bacon wage determination for each project.

Conduct Labor Compliance Program Training at Preconstruction Conference meetings.

Status: On going. CCMI provides at least one preconstruction conference meeting for each project. On very large projects, CCMI has conducted more than one meeting to provide information to subcontractors who are beginning work later in the project and did not have the opportunity to receive this information at the project start time.

Provide a phone line and e-mail contact where contractors and subcontractors can communicate for clarification on prevailing wages, certified payrolls, and apprenticeship and compliance issues.

Status: On going. Two full time CCMI employees are dedicated as lead staff members to the Montgomery County projects: Jessica Finau and Yvonne Nickles. Three other staff members assist Finau and Nickles with audits, investigations and other issues. Deborah Wilder, President of CCMI, is also available to consult on any issue or provide additional assistance.

Check for State License and worker's compensation.

Status: On going. This requirement is only set forth in certain County contracts. As such, CCMI only provides a license check and check for worker's compensation on those projects.

Monitor all Apprenticeship Requirements.

Status: On going. Both Maryland State regulations and Davis-Bacon regulations require that: apprentices must be enrolled in a properly recognized apprenticeship program; all apprentices must be supervised by a journeyman-level worker in the same trade; and apprentices must be employed at a stated ratio to allow for proper supervision of on-the-job training. The Montgomery County Prevailing Wage Law mandates that apprentices be properly enrolled in an approved apprenticeship program. CCMI verifies that apprentices are enrolled in such a program.

Conduct monthly audits on certified payrolls forms.

Status: On-going. For all projects, CCMI conducts an audit every month, of all employees, on each contractor and subcontractor. This includes comparing the wage rate listed on the certified payroll with the applicable Montgomery County rate, reviewing the amount of fringe benefit contribution claimed and assuring that the contractor/subcontractor properly calculated these amounts, verifying that any overtime and holiday time is properly paid, comparing daily reports and monthly interview sheets with the certified payrolls and identifying any deficiencies.

Conduct periodic reviews on Daily Jobsite Reports.

Status: On going. This is done periodically on a project-by-project basis. The frequency of this review depends on a variety of factors, including, the length of the project, the number of subcontractors, the number of employees, and whether serious potential underpayments have been previously identified.

Conduct monthly onsite visits and interviews.

Status: On going CCMI visits each jobsite monthly and interviews workers. The number of the workers interviewed depends on the size of the project, the number of subcontractors on the

project and any potential claims of under-reporting of hours/employees or misclassification. While the workers are selected randomly, CCMI does attempt to interview one or more workers from each subcontractor working on the project over the course of the project. In 2012, CCMI conducted more than 2,000 interviews on 49 County projects.

Conduct investigations.

Status: On going. CCMI conducts investigations when it receives information as a result of reviews of certified payrolls and related documentation, through employee interviews or independent contact by employees that proper wages are not being paid. Most investigations focus around the misclassification of workers or a contractor's failure to list and/or pay employee(s) on certified payrolls the proper prevailing wage rate.

Provide monthly reports to Montgomery County and contractors.

Status: On going. In order to promote efficient compliance with the law on the project, CCMI identifies a deficiency and communicates promptly to the prime contractor on each project. The prime contractor then contacts any applicable subcontractor regarding missing documentation, underpayment or other deficiencies listed in the report. To help expedite this process, CCMI has found that creating a separate report for each subcontractor allows the contractor to then quickly turn this report around to the affected subcontractor either by email or facsimile.

Each report details the certified payrolls which were reviewed, any missing or deficient documentation, identification of any underpayment of wages and other outstanding issues. If documentation or clarification was previously requested and not addressed by the subcontractor, this information is also noted on this report. The report also includes the total amount of any outstanding penalties for the late submission of payrolls.

This year, CCMI developed an additional matrix summary of the projects, a report for each project and an expanded narrative of CCMI's activity and provided them to the County each month.

Communicate potential violations with recommended action.

Status: On going. In addition to the monthly reports outlined above, CCMI is in regular contact several times a week with the County's Prevailing Wage Program Manager regarding unresolved issues and investigations being conducted.

Communicate with Contractors.

Status: On going. CCMI works with all contractor and subcontractors with the goal of amicably resolving issues related to violations, penalties and compliance. CCMI has daily individual phone calls, conference calls, emails and/or facsimile communications with contractors and subcontractors regarding these issues.

Provide Summary Report to Montgomery County at Project Completion.

Status: On going. At the close of each project, CCMI sends a final report to the County. The report details, by contractor and subcontractor, each prevailing wage violation identified; the steps CCMI took during its audit and/or investigative process; a narrative of the violation and any special circumstances; a discussion of the remedy (restitution); whether that restitution has been made by the effected contractor; and a recommendation to the Director of the Department of General Services regarding the imposition of penalties.

For federally funded (Davis-Bacon) projects, we perform similar, but not identical services:

1. Confirm the Davis–Bacon wage determination applicable to each project. The County is responsible for inserting the appropriate Davis Bacon language in the bid specifications and construction contract.
2. Conduct an onsite meeting with Contractors to review Davis-Bacon requirements for prevailing wages on the project.
3. Provide a copy of the Davis-Bacon required postings for contractors to post on the jobsite.
4. Collect and review certified payroll and related documents each month from contractors. Review certified payrolls for proper wages and fringe benefits paid. Compare Davis-Bacon prevailing wage requirements to certified payroll to ensure that the proper wages and fringe benefits are paid. While Davis-Bacon wage rates and work classifications are identical in many instances, they are NOT always so.
5. Collect “certifications” for all apprentices working on the project (who must be enrolled in an approved Bureau of Apprenticeship Training (DOL) apprenticeship program).
6. Conduct monthly jobsite visits interviewing employees on the project to verify proper prevailing wages are paid and verifying that the appropriate Davis-Bacon poster is posted on site.
7. Provide Agency with report on prevailing wage compliance/deficiencies on a monthly basis.
8. Provide Prime contractor with monthly reports of audit finding and probing detailed information relating to any missing documentation or deficiencies in Davis-Bacon prevailing wage compliance requirements.
9. Conduct additional investigations as may be warranted by payrolls and interviews.
10. Work with contractors to ensure full compliance with prevailing wage and apprenticeship requirements.
11. Summarize penalties as required.
12. Provide final project report to County at conclusion of project.

Projects:

During Fiscal Year 2012, Contractor Compliance and Monitoring Inc. (CCMI) provided Labor Compliance Services for 49 projects in Montgomery County.

Federally Funded Projects:

Arliss Street (DOT)
Cedar Lane Bridge Repair (DOT)
East Gude Drive Bridge Rehabilitation (DOT)
Shady Grove Bike Path (DOT)
Silver Spring Transit Center (DGS)

These projects include federal funding and are subject to the federal Davis-Bacon and Related Acts for prevailing wage compliance.

County Projects:

Department of General Services:

- 3rd Dist. Police Station
- Animal Shelter
- Bethesda Fire Station #6
- Equipment Maintenance & Operations Center
- Dept. of Liquor Control Warehouse
- Fillmore Music Hall Renovation
- Gaithersburg Library Renovation
- Germantown Swim Center
- Judicial Center Annex
- Judicial Center HVAC
- Olney Library Renovation
- Plum Gar Recreation Center
- Public Safety Headquarters
- Travilah Fire Station #32
- White Oak Recreation Center

Department of Transportation:

- Bridge Painting – Countywide
- Clarksburg Road Bridge Replacement
- Dale Drive
- Father Hurley Boulevard Extended
- Garage #5 Renovation
- Garage #7 Renovation
- Hungerford Drive Garage Renovation
- Old Georgetown Bridge
- Stoney Creek Stormwater Management
- Watkins Mills Road Extended
- Woodfield Road Extended
- White Ground Road Bridge Replacement

Task Orders:

- Bauer Community Center
- Baysaver System
- Brookville Depot
- Chain Link Fence
- Forest Glen Dam Embankment
- Germantown Fire Station #34
- Kensington Fire Station #25-Ejector Pump
- Kensington Fire Station #25-7” Floor Elevation
- MARC Way Signs
- Poolesville Training Site
- Silver Spring Library Utility Work

Silver Spring Transit Center-Pavement Markings
Silver Spring Transit Center-Striping
Takoma Park Fire Station #2
Takoma Park Fire Station #2-Erosion Control
Trench Drains
Veterans Plaza

Projects Closed Out:

Clarksburg Road Bridge Replacement, Hungerford Drive Garage Renovation, Bethesda Fire Station #6, Bridge Painting-Countywide, Judicial Center-HVAC, Germantown Swim Center, Takoma Park Fire Station #2, MARC Way Signs, Kensington Fire Station #25-Ejector Pump, Kensington Fire Station #25-7" Floor Elevation, Takoma Park Fire Station #2-Erosion Control, Silver Spring Transit Center-Pavement Markings, Veterans Plaza, Baysaver System, Chain Link Fence, Woodfield Road Extended, Forest Glen Dam Embankment, Poolesville Training Site, Cedar Lane Bridge Repair and Arliss Street.

Trends:

The Prevailing Wage/Labor Compliance Program completed its third year. Questions frequently arise from contractors and subcontractors. CCMI and LCPTracker support personnel are accessible by telephone and email. CCMI Maryland staff which conduct jobsite interviews, attend preconstruction meetings are available to the County for meetings or consultation upon request.

LCPTracker:

The County requires all contractors and subcontractors on all projects to use LCPTracker to submit certified payrolls and related labor compliance documentation. The use of LCPTracker provides several benefits to the contractor and the County.

First, it provides uniformity of data and information reporting by requiring all contractors and subcontractors to use the same forms and data entry system.

Secondly, it allows 24-7 access of the records by the County and CCMI. For the contractors and subcontractors, it permits immediate submission of certified payrolls all within the control of the contractor or subcontractor. Once the individual contractor "certifies" the payroll, it is immediately submitted, date stamped, logged and available to CCMI for auditing. This prevents loss of the documentation and complaints that documents were previously submitted and allegedly lost, thereby eliminating the need for multiple submissions.

Finally, the use of LCPTracker is a green solution. This is in stark contrast to the previous system, which required the submission of massive amounts of paper containing certified payrolls, fringe benefit and related information.

However, LCP Tracker is only a tool and it is only as good as the information entered by the contractors. If incorrect information is entered by the contractor, then there is typically a wage violation. Thus, CCMI does not rely merely on the LCPTracker "alert" system, but also individually reviews and audits every certified payroll submitted.

While there have been some complaints by subcontractors relating to the LCPTracker system, these have been relatively few when one considers the massive number of documents submitted on the scores of projects using the system since the program was implemented. CCMI found that many of the complaints were the result of a subcontractor's unwillingness to learn the LCPTracker system. LCPTracker provides online training of their system as well as interface uploads. Additionally, LCPTracker provides free weekly one-hour webinars that contractors may attend. The purpose of these sessions is to explain how to use the system and answer questions about the system. While CCMI tries to answer questions relating to a contractor's use of LCPTracker, most of the complaints resulted from the subcontractors' failing to view the online tutorial, attend the webinar or contact LCPTracker's technical support line. Most contractors are now comfortable with this system of submitting documentation.

Fringe Benefits:

Contractors who do not contribute to a union trust fund or an approved hours bank program for fringe benefits are required to amortize or annualize the value of certain benefits they pay over the course of all hours worked by those employees. As this sometimes requires calculations to be done for each employee to arrive at this fringe benefit number, some contractors are frequently confused.

Even some contractors on the federally funded projects are not in compliance with Davis-Bacon requirements. Prior to the County's Prevailing Wage Law, these contractors believed they were in compliance with state or federal prevailing wage law. In reality, even those contractors who have performed federal Davis-Bacon work in the past have never been audited. As such, the proper implementation of the County's Prevailing Wage Law, as well as the Davis-Bacon requirements, has revealed numerous violations.

The rules and regulations relating to pension contributions are distinct from those relating to health and welfare, vacation and holiday pay paid by contractors. Some contractors have worked on publicly funded projects for years without ever having anyone review or audit the projects. Thus, improper payments and incorrect habits have been adopted by some contractors and subcontractors and CCMI works with these companies to ensure that the calculations are done properly. .

Apprentice Issues:

In a few instances, contractors will claim to use an "apprentice" who is not enrolled in a properly approved apprenticeship program. CCMI verifies that all apprentices are bona fide enrolled apprentices and confirm with the appropriate Apprenticeship committee, are paid the proper level of wages and benefits set forth in the Apprenticeship Standards and are approved by the Maryland DLLR and the US DOL. The Montgomery County Prevailing Wage Law requires that apprentices be approved through the State of Maryland's apprentice program. (All apprenticeship programs approved by the State of Maryland are also approved by the Bureau of Apprenticeship Standards with the U.S. Department of Labor.)

Wage Violations:

The typical wage violation from contractors and subcontractors stems from the use of an improper wage rate. This results from the worker being paid either their regular rate of pay for a non-prevailing wage project or a "prevailing rate" used on a prior project. Less frequently, the underpayment is due to the improper calculation of fringe benefits.

Penalties:

There are some contractors who wrongly believe that, if they correct wage errors or eventually submit the late payroll, then all penalties will disappear. The County and CCMI have been clear, both at the preconstruction conference and throughout the project in advising the contractor, that the County is within its right to assess a penalty for these violations and the penalties will not automatically disappear if the items are ultimately, albeit late, corrected.

Observations:

Contractors who are working on their second or third project with the County seem to now understand the requirements set forth by the County (Davis-Bacon Act for the federally funded projects).

Some subcontractors who are not familiar with the County's labor compliance program are attempting to "cut corners" by underpaying employees through a variety of methods. While this is not a majority of the contractors, the investigation and enforcement of the prevailing wage requirements with these contractors does take an inordinate amount of time when compared to other auditing requirements. An error or mere deficiency typically takes a minimum of 3 months or more to resolve (1 month of work occurs before the payrolls are reviewed and the issue identified and provided to the contractor; 1 month for the subcontractor to correct the error and provide the correction and documentation to CCMI; and 1 month to receive proof of restitution.) When contractors object or do not understand the basis for the deficiency or underpayment, it takes additional time to work with the contractor and subcontractor to resolve the issue.

The typical investigation can take 6 months or more. This is because a contractor in this instance may be falsifying records and therefore is reluctant to provide back-up documentation. It may take two or three requests before the documentation is provided. When documentation is produced, it is not for a single month of work, but for the entire project and frequently for all employees. This requires a massive amount of time to review and essentially re-audit the project, comparing weekly time cards with payroll records and then, to the certified payroll submitted. When employees are contacted by CCMI, it takes several weeks before we receive a response. This is typically followed up with additional phone calls and review of documentation, in some instances, received from the employees. It is absolutely necessary that this process be thorough and complete. First, CCMI does not want to accuse a contractor of a violation without sufficient proof (disgruntled employees have been known to report a violation when none existed). Secondly, the information CCMI ultimately provides to the County regarding a violation for which penalties will be assessed must be **thoroughly substantiated**, should the contractor appeal the decision of the Director of the Department of General Services to order the payment of corrected wages and impose penalties.

The need to enforce the Prevailing Wage Law evenly and fairly is necessary to ensure the worker is fairly compensated, and because it maintains an even playing field for contractors when they compete for work. If all are required to comply with the Prevailing Wage Law, then no single contractor or subcontractor is receiving an unfair advantage in the procurement process by undercutting wages.

Detailed Project/Status Information:

The best indicator of the status of any project is a review of the monthly reports that CCMMI provides to the prime contractor (with a copy to the County). CCMI provides a separate report for each subcontractor that CCMI audited on the project. As the prime contractor is ultimately responsible for the payment of prevailing wages on the project, the prime contractor is responsible to ensure that all subcontractors are in compliance and correct any deficiency. Breaking the reports down by subcontractor provides greater efficiency for the prime contractor in getting this information to each subcontractor without having to engage in a time consuming extraction of information about subcontractors from one single report. Typically, a prime contractor can take the report for each subcontractor and deliver this to that subcontractor by email or facsimile in a matter of minutes.

The report identifies the payrolls reviewed, missing or incorrectly completed documents, and any deficiency in wages, misclassification or underreporting of hours. If there are issues relating to fringe benefits, amortization or apprentices, these items are also noted. Additionally, each subcontractor is provided with a running total of potential penalties which may be imposed for the late submission of payrolls.

Conclusion:

CCMI recognizes that this is still a relatively new program and, as with any new program, there are new policies, processes and procedures that must be incorporated. All of this seems to take longer than anyone anticipates. However, CCMI's commitment is to "get it right" in whatever format and context the County ultimately decides. CCMI has national expertise in this field and hopes that this expertise will assist the County as it implements this important program.

Ensuring that the proper prevailing wage rates and the requirements of the labor compliance program are followed is an important mandate from the County Council.